

MAINE STATE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
JULY 22, 2016

Conference Room, Gambling Control Board  
Department of Public Safety  
45 Commerce Drive, Augusta, ME

Commission Members Present: William Varney, Chair, Gary Reed, William McFarland and Michael Graham

Commission Member Absent: Alex Willette

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Miles Greenleaf, Dennis May and Zachary Matzkin

**1. Call the Meeting to Order and Introductions:** William Varney, Chair

**2. Review and Approval of Written Decisions and Orders**

Commissioner Varney asked for a motion on decision and orders. Commissioner Reed made a motion to approve the decision and order for Michael Cayouette Complaint No. 2015 MSHRC 089 as presented. Commissioner McFarland seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the decision and order for Michael Cayouette Complaint No. 2015 095 as presented. Commissioner Graham seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the decision and order for Aaron Hall Complaint No. 2016 MSHRC 01 as presented. Commissioner Graham seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the decision and order for Robert Sumner Preliminary License Denial as presented. Commissioner Reed seconded. Vote 4-0.

**Review and Approval of Minutes for 1/15/2016, 1/22/2016 and 2/24/16**

Commissioner Varney asked for a motion on the minutes. Commissioner McFarland made a motion to approve the minutes for January 15, 2016, January 22, 2016 and February 24, 2016 as written and presented. Commissioner Reed seconded. Vote 4-0.

**3. Adjudicatory Hearing:**

- a. RE: Robert Cushing, Complaint Number 2016 MSHRC 04.** Mr. Cushing is alleged to have violated MSHRC Rules Chapter 11, Section 9. Mr. Cushing is the trainer of record of the horse "Maine Cast". A blood sample obtained from the horse "Maine Cast" following the Third Race at Bangor Raceway on May 25, 2016 disclosed the presence of Testosterone. Mr. Cushing was present and represented himself. AAG, Guay asked Mr. Jennings if the Department wanted to consolidate the two complaints. Mr. Jennings stated as long as they are considered as two separate violations. AAG, Guay qualified the Commissioners. Commissioner Graham recused himself from the hearing. AAG, Guay gave Mr. Cushing his oath. Mr. Cushing stipulated to being the trainer of record of the horse Maine Cast on May 25, 2016 and June 6, 2016; and that Maine Cast raced in the third race at Bangor Raceway on May 25, 2016 and in the first race at Bangor Raceway on June 6, 2016. Mr. Cushing stated yes to both questions. AAG, Guay asked Mr. Cushing if the horse Maine Cast had an elevated level of Testosterone in its system on May 25, 2016 and June 6, 2016. Mr. Cushing stated that he did not know. Mr. Jennings presented the following exhibits for complaint number 2016 MSHRC 04. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer Application; Exhibit

3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, MSHRC Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Lab Certificate of Analysis and Exhibit 8, ARCI Guidelines. Mr. Jennings presented the following exhibits for complaint number 2016 MSHRC 06. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, MSHRC Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Lab Certificate of Analysis and Exhibit 8, ARCI Guidelines. Mr. Cushing did not object to the exhibits being entered. AAG, Guay admitted the exhibits without objection. He asked Mr. Cushing if he had any exhibits. Mr. Jennings stated that Exhibits 7 and 8 is the evidence. Mr. Cushing testified. AAG, Guay gave Martha Smith her oath. Ms. Smith testified. AAG, Guay asked Mr. Cushing if he has any more witnesses. Mr. Cushing stated yes, Mr. Roger Spear. AAG, Guay gave Mr. Spear his oath. Mr. Spear testified. AAG, Guay asked if there were any more witnesses. There were not. Mr. Jennings called Mr. Greenleaf. AAG, Guay gave Mr. Greenleaf his oath. Mr. Greenleaf testified. AAG, Guay asked for a closing statement from Mr. Jennings. Mr. Jennings stated that he would not challenge the integrity of Mr. Cushing or the other owners. AAG, Guay closed the hearing. Commissioners deliberated. AAG, Guay stated that they need to make a motion and first you need to make a finding of a violation. Commissioner McFarland made a motion that there is a finding that the horse is in violation of the rules as specified on the dates of May 25, 2016 and June 6, 2016 as tested. Commissioner Reed seconded. Vote 2-1 (Commissioner McFarland opposed). AAG, Guay asked the state if there were any recommendations for penalty. Mr. Jennings stated that they are following the ARCI classifications system and guidelines in Chapter 17. Mr. Cushing's complaint number 2016 MSHRC 04 would be a first violation in a 365 day period and the ARCI classification would put it as a Class B substance which would have a minimum penalty of \$500 fine, 15 day suspension and loss of purse. The second complaint number 2016 MSHRC 06 would be a minimum of 30 days suspended, \$1,000 fine and the loss of purse. AAG, Guay stated to Mr. Cushing that he did violate the rule. Mr. Cushing stated that he did not do it. Mr. Spear stated that they love the sport. This is the last straw for him. Harness racing needs people like Mr. Cushing. AAG, Guay closed the hearing on the penalty phase. Commissioner Reed made a motion that a warning be imposed for complaint number 2016 MSHRC 04, no fine and return of the purse. For the second complaint number 2016 MSHRC 06 a 15 day suspension, \$500 fine with all but \$100 suspended and return of purse. Commissioner McFarland seconded. Vote 3-0.

- b. **RE: Robert Cushing, Complaint Number 2016 MSHRC 06.** Mr. Cushing is alleged to have violated MSHRC Rules Chapter 11 Section 9. Mr. Cushing is the trainer of record for the horse "Maine Cast". A blood sample obtained from the horse "Maine Cast" following the First Race at Bangor Raceway on June 6, 2016 disclosed the presence of Testosterone. See complaint number 2016 MSHRC 04.
- c. **RE: Wil DuBois, Complaint Number 2016 MSHRC 05.** Mr. DuBois is alleged to have violated MSHRC Rules Chapter 11. Mr. DuBois is the trainer of record for the horse "I'm A Lucky Man". A blood sample obtained from the horse "I'm A Lucky Man" following the Eighth Race at Scarborough Downs on May 14, 2016 disclosed the presence of 3-hydroxylidocaine a metabolite of lidocaine. Mr. DuBois was present and representing himself. AAG, Guay gave Mr. DuBois his oath. The Commissioners were qualified. AAG, Guay asked Mr. DuBois if he stipulated to the fact that he was the trainer of record of the horse I'm A Lucky Man and that the horse raced in the eighth race at Scarborough Downs on May 14, 2016. Mr. DuBois stated yes. AAG, Guay asked Mr. DuBois if he admits to the fact that the horse

I'm A Lucky Man had lidocaine in its system on May 14, 2016. Mr. DuBois stated no. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, MSHRC Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Lab Certificate of Analysis and Exhibit 8, ARCI Guidelines. AAG, Guay admitted these exhibits without objection. Mr. Jennings stated that this is a standard medication violation. There is no threshold for this substance. Therefore it becomes a prohibited substance under Chapter 11, Section 1. AAG, Guay asked Mr. DuBois for his statement. Mr. DuBois stated that Mr. Petrelli left his horses for him to train. Once he got notice from Mr. Greenleaf that he had a positive test, he went to the barn and found a spray can that did have the ingredient in it. AAG, Guay stated that he would mark a photo of the spray can as Licensee Exhibit 1. There were no witnesses. He closed this portion of the hearing. Commissioners deliberated. Commissioner McFarland made a motion that based on the evidence provided a violation has occurred. Commissioner Graham seconded. Vote 4-0. AAG, Guay stated that Mr. DuBois has been found in violation. Mr. Jennings stated that they are following the rule and resting on the ARCI Classification as a Category B penalty. For a first offense, 15 day suspension, \$500 fine and return of purse. AAG, Guay asked Mr. DuBois if he had any mitigating circumstances. Mr. DuBois stated that this is his first year as a trainer and it was an honest mistake and lack of knowledge. AAG, Guay closed the hearing on the penalty phase. Commissioner Graham made a motion for a 15 day suspension, \$500 fine and return of the purse. Commissioner McFarland seconded. Vote 3-0-1. Commissioner Varney abstained.

- d. **RE: Reopening the 2016 Race Date Hearing.** Pursuant to 8 M.R.S. § 271 and Commission Rule Chapter 19, Section 10, the Commission may reopen the race dates and licensing hearing upon a motion of a licensee to take testimony relative to race dates and/or conditions on a license. AAG, Guay stated that there is a motion on the floor to reopen the race date hearing. The rules allow for reopening the race date hearing for very specific purposes. He sent the current race date decision and order to the Commission members to review. He polled the intervenors and the parties that were present if they had any issues at this time. Intervenors present were Maine Harness Horsemen's Association, Maine Standardbred Breeders and Owner's Association and Maine Association of Agricultural Fairs and they had no issues at that time. Ed MacColl representing Scarborough Downs stated that they filed an application asking for a two year license. They were hoping that the law would be changed this year but the bill did not get in. They need to race the days required this year to get a license for next year. AAG, Guay stated that the purpose to reopen the race date hearing is to consider an amended application for Davric Maine Corp. dba Scarborough Downs to extend their license through calendar year 2017. Commissioner Reed made a motion as stated above by the hearing officer. Commissioner McFarland seconded. Vote 2-2. After some discussion, Commissioner Reed made a motion to reopen the race date hearing as stated above by the hearing officer for purposes of discussion. Commissioner McFarland seconded. Vote 4-0. AAG, Guay gave Mr. Jennings his oath. Mr. Jennings stated that the notice was published in the newspaper and the notice of hearing was sent certified to the intervenors and licensees. AAG, Guay qualified the Commissioners. He stated under the decision and order on page 8 section 4 the fact in the decision and order can support the relief requested. He asked Mr. Jennings if the application of Scarborough Downs is substantially complete. Mr. Jennings stated yes. Testimony was provided. Commissioner Graham made a motion to continue this issue to the next commission meeting. AAG, Guay stated that he is going to continue the

hearing and asked the department to bring forward copies of today's notices. There was no discovery order from any of the parties that needed to be brought forward.

- a. Northern Maine Fair Association, Presque Isle; Fair Meet-**not present**
- b. Sagadahoc Agricultural & Horticultural Society, Topsham; Fair Meet-**present**
- c. Skowhegan State Fair, Skowhegan; Fair Meet-**not present**
- d. Union Fair Society, Union; Fair Meet-**present**
- e. Windsor Fair, Windsor; Fair Meet-**not present**
- f. Oxford County Agricultural Society; Oxford Fair, Oxford; Fair Meet-**present**
- g. Franklin County Agricultural Society; Farmington Fair, Farmington; Fair Meet-**present**
- h. Cumberland Farmers Club, Cumberland Fair, Cumberland; Fair Meet and Extended Meet-**present**
- i. West Oxford Agricultural Society; Fryeburg Fair, Fryeburg; Fair Meet-**not present**
- j. Davric Maine Corp.; Scarborough Downs, Scarborough; Commercial Meet-**present**
- k. HC Bangor, LLC; Bangor Raceway; Commercial Meet-**present**

- e. **RE: Hearing on the Horse Supply.** Pursuant to 8 M.R.S. § 271 (7), the Commission will take testimony to determine whether the horse supply in the State has been adequate for the number of dashes conducted on assigned race dates and may limit the number of dashes that licensee may race after August 1. AAG, Guay gave the oath to Mr. Jennings and Mr. Greenleaf. Mr. Greenleaf presented a handout of the 2015 Horse Supply. Jose Flores of Bangor Raceway presented a handout too. Mr. Greenleaf explained the handout. AAG, Guay asked Mr. Jennings to explain to the Commissioners why we are having a horse supply hearing. Mr. Jennings stated that in statute under Title 8, Section 271.7 it states why we need to have a hearing on horse supply. AAG, Guay asked if there has been any request to reduce the number of dashes. Mr. Jennings stated that there has been no formal request. AAG, Guay asked if there were any intervenors that had questions. There were none. Commissioner Varney asked for any discussion or a motion. Commissioner Graham made a motion to accept the report as presented and close the hearing. Commissioner McFarland seconded. Vote 4-0.
- f. **RE: Christopher Lefebvre** – Mr. Lefebvre has appealed the preliminary denial of his application for a harness racing license for calendar year 2016 for the alleged violation Maine State Harness Racing Commission rule Chapter 17 Section 3, sub-section 1. C. 1, 2, & 4. Mr. Lefebvre is alleged to have violated Maine State Harness Racing Commission rules for being found guilty of a civil violation in March 4, 2004 of Cruelty to Animals (7 M.R.S.A. Section 4011 (1) (E)). Mr. Lefebvre was present and represented himself. AAG, Guay gave Mr. Lefebvre his oath. AAG, Guay qualified the Commissioners. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, MSHRC 2016 License Application; Exhibit 3, Decision by the Cumberland Superior Court; Exhibit 4, USTA All Rulings Report; Exhibit 5, Preliminary Denial Letter; Exhibit 6, 2010 Maine State Harness Racing Commission Decision to Deny a License and Exhibit 7, State of California Termination of Temporary License. AAG, Guay stated that exhibit 6 is being admitted for purposes of proof that he is not eligible this year. There was no objection to the admission of exhibits 1-7. AAG, Guay stated that Mr. Lefebvre presented a 4 page exhibit package. He asked Mr. Lefebvre if he waived the notice of hearing because the notice did not state the correct section. Mr. Lefebvre stated that he does waive the objection on the

notice. Mr. Jennings stated that the Department's position is the civil conviction forms a basis of providing information and indication to the Commission that cruelty to animals is detrimental to the sport and to the welfare of horses especially Standardbred horses. That continues to be the basis of which the Department has issued a preliminary denial. AAG, Guay asked Mr. Jennings if he agreed that he denied the license under Chapter 17 Section 3. Mr. Jennings stated "yes". AAG, Guay called Dennis May to the stand and gave him his oath. Mr. May testified. Mr. Lefebvre testified. AAG, Guay gave Mr. David Sawyer his oath. Mr. Sawyer testified. AAG, Guay closed the hearing. Commissioner Reed stated that this is a troubling issue for him. The fact that a horse under his care died is troubling. If it were within his purview, he would be inclined to authorize a conditional license for one year with no violation of any kind. Commissioner Graham and McFarland agreed. Commissioner Reed made a motion to authorize the staff to issue Mr. Lefebvre a conditional license with the provision for one year with no violations of any kind. Commissioner Graham seconded. Vote 4-0.

#### **4. Other Business:**

Pursuant to 8 MRS Section 267 the Commission will conduct a hearing to make findings regarding and develop recommendations for its operating budget for the biennium.

Commissioner Varney stated that we will be looking at the budget. Mr. Jennings stated that Title 8, Section 267 describes what the Commission needs to do. (Mr. Jennings read this into the record). The two page proposed 2018-2019 Biennial Budget document was passed out and admitted as Exhibit 1. Mr. Jennings stated that Ms. Farr will present the budget. AAG, Guay gave Ms. Farr her oath. Ms. Farr asked the Commissioners to review Exhibit 1 and note the items highlighted in yellow were not final. Additional information needed to complete these items had yet to be finalized and will be available from the Office of State Controllers and the Bureau of Budget at a later date. For the Personnel costs, Ms. Farr asked the Commission to approve the positions listed on the second page with the following changes: the veterinarian position that is currently vacant and an unestablished Office Assistant II position be released and the vet tech position for 30 weeks be increased to a 52 week position. She is asking to approve these positions based on the information that will be received from the Bureau of The Budget. Ms. Farr does not have the actual cost for health insurance and other personnel services to calculate the actual numbers at this time but they will be provided in the future. AAG, Guay asked Mr. Jennings if he received any formal request for intervention. Mr. Jennings stated yes from Ms. Diann Perkins. AAG, Guay stated that the Maine Standardbred Breeders and Owners have intervention status. Ms. Perkins asked what pulling events have to do with harness racing. Ms. Farr stated that the contracts for the vets and testing are with harness racing. If you look at the bottom, there is a transfer of funds out and it looks like we are getting income for it so it's negating the expenses that are up above in the professional services not by state line. AAG, Guay asked if the Commissioners have any questions. Commissioner McFarland stated looking at Exhibit 1 the veterinarian position that will be vacant and then down below the office assistant II will be eliminated and the vet tech will be increased from 30 weeks to 52 weeks. These other authorized weeks of these individuals are they the same as previous? Ms. Farr stated yes they are. AAG, Guay asked if there were any other questions. Ms. Perkins stated that the amount of money that is being spent on the testing. Ms. Damren stated that they are way over the budget and the actual was \$991,543.15 for 2016. Ms. Farr stated that the first column is the actual amount that was spent. There is a difference of \$100,000. Commissioner Varney stated that he doesn't know how they can approve a budget that doesn't show the health benefits or the payroll, and if we look at it, it is going to be at least \$200,000 more. He would also like to see the actual compared to the budget for this year. AAG, Guay stated that the statute requires the Commission to make a finding that the proposed budget is sufficient to meet the needs of the industry. Mr. Higgins stated that they

want to make sure that the executive director is going to be a full time position and not a half time position for the future. Ms. Farr stated that the budget does account for a full time executive director. Don Marean stated that his question is that the budget we are working on is for the next biennium budget year; correct. Ms. Farr stated that is correct. Mr. Marean stated that this budget has to be approved by the Legislative Committee on Agriculture, Conservation and Forestry Committee. It is presented by the Commissioner to them and the Committee makes the final decision. AAG, Guay stated that it seems the statute says the Commissioners make a finding and the Commissioner of Agriculture, Conservation and Forestry makes its recommendation to the Legislature which is the final say. This seems to be a step in the process to get it there. Commissioner Graham stated that he finds it very difficult to do anything here without seeing what we had in the past. Mr. Jennings stated that we are trading 2 vacancies and increasing 1 seasonal position which is currently 30 weeks to 52 weeks. Commissioner McFarland stated that line 40, professional services is the one that we should take notice of. That is \$240,000 more. Ms. Farr stated that a majority is the testing part and the contract doubled per sample. Commissioner McFarland asked how many competitors bid. Ms. Farr stated just one. It was sent out as a RFP so any one that wanted to could bid. AAG, Guay closed the hearing. Commissioner Varney asked for any discussion. AAG, Guay reminded the Commissioners that they do have a statutory date of August 1. The motion could be a finding that the proposed budget in Exhibit 1 in form is approved with a continuing supplementation to reflect actual numbers subsequent to today's proceeding. Commissioner Varney seconded. Vote 4-0.

- 5. Public Comment**
- 7. Schedule of Future Meetings**  
August 11, 2016  
September 23, 2016
- 8. Adjourn**  
2:00 p.m.